IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.278 OF 1990

The State of Maharashtra ...Appellant.

V/s

Somayya Ramayya Gundeti,
Age 65 years, Occ- Nil,
R/o 102/C/75, Bhavani Peth,
Solapur.

2. Ramalu @ Ramesh Somayya
Gundeti,
Age 20 years, Occ- Labour,
R/o. 102/C/75, Bhavani Peth,
Solapur. ...Respondents.

Mr. D.P. Adsule, APP for the appellant - State

None for the respondents.

CORAM: V.M.KANADE,J.
DATE: 24th Septmber, 2004

ORAL JUDGMENT:

1. Heard the learned APP for the appellant - State.

2. None for the Respondents.

3. Respondents were charged under section 326 read with section 34 of the Indian Penal Code. They were, however, acquitted by the Judicial Magistrate, First Class, Solapur. Incident in question took place on 27/10/1988.

4. Prosecution's case is that the accused assaulted the complainant on his left leg and on his back with a

pipe. Prosecution examined 11 witnesses.

5. The Trial Court has observed that there is a discrepancy in the version of the complainant and the other witnesses and that the evidence of the complainant is self contradictory. Further, there is delay in recording the FIR and that the names of the eye witnesses were not mentioned in the FIR but were recorded in the supplemental statement when the Investigation Officer asked the complainant to disclose the names of the eye witnesses. Similarly, the doctor who examined the complainant has stated that the nature of the injuries was simple. The Trial Court also disbelieved the seizure of an iron pipe which was seized after 23 days and the seized pipe was not brought to the Court for identification. Further, the complainant in his evidence has stated that he was assaulted with stick and not with pipe.

6. The learned APP appearing on behalf of the appellant - State has taken me through the evidence of prosecution witnesses. P.W.1 has turned hostile. The statement of complainant is full of contradictions. The accused are the brother and father of the complainant. The complainant was living separately in a room near their residential house. In the

evidence he has stated that his father had assaulted on his back with a stick and he had fallen down unconscious and his brother has hit him on the back and the leg by means of an iron pipe. He has stated that his father and brother had asked him to vacate the residential premises and, therefore, he was assaulted. In the cross-examination he has admitted that his father has filed a suit against him in which an order was passed restraining him from obstructing the father's possession. He also admitted that the complaint was filed by his father against him on the allegation that he has injured his father on his head.

7. Considering the inherent contradictions in the evidence of P.W.2 and the other alleged eye witnesses, I am of the view that the Trial Court has rightly disbelieved the evidence of the complainant. There is also delay in filing the FIR though injuries are simple in nature and he has stated that he had returned at about 4.00 P.M. to his house. The FIR was lodged at 8.30 P.M. I am of the view therefore that there is no reason to interfere with the findings given by the Trial Court. Appeal is, therefore, dismissed.

V.M. KANADE, J.